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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,250	01/04/2002	William R. Cruz	32679-3000	3320
22204	7590	04/30/2007		
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER HAVAN, THU THAO	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 04/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/035,250	CRUZ ET AL.	
	Examiner	Art Unit	
	Thu Thao Havan	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/13/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14, 16, 18, 21-23, 25-41, 47, 49, 51, 54-56 and 58-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14, 16, 18, 21-23, 25-41, 47, 49, 51, 54-56 and 58-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Claims 1-8, 14, 16, 18, 21-23, 25-41, 47, 49, 51, 54-56, and 58-72 are pending.

This action is in response to the remarks received February 13, 2007.

Response to Arguments

The rejection of claims 1-8, 14, 16, 18, 21-23, 25-41, 47, 49, 51, 54-56, and 58-72 under 35 U.S.C. 103(a) as being unpatentable by Tertitski et al. (US 6,493,681) and Li et al. (US 7,043,449) is maintained.

Upon a closer examination, Applicant's arguments filed February 13, 2007 have been fully considered but they are not persuasive.

In response to the arguments concerning the previously rejected claims the following comments are made:

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., applying a trading strategy dynamically upon occurrence of a market trigger condition) are not recited in the rejected claim(s). Although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant alleges that the prior art made of record fails to teach automatically generating an entry or exit order over said distributed financial computer network pursuant to said trading strategy. The examiner disagrees with applicant's representative since Tertitski teaches automatically generating an entry or exit order over said distributed financial computer network pursuant to said trading strategy (col. 2, lines 6-29; col. 5, lines 28-49; figs. 2 and 5). Tertitski discloses the automatic selection/recommendation of the best strategy. He discloses the method of fast visual dynamics and stability evaluation of such strategies versus time for selecting stocks for investment potentially giving best capital gains. In that, the user can analyze 20-40 different views for 5-10 seconds. For example, he discloses the user starts the program and enters the following values: date of the initial investment, the amount of the initial investment, the broker commission per transaction, and stock ticker symbol. Then the user presses the 'OK' button. The system automatically recalculates the strategy matrix for the entered date.

In addition, Applicant alleges that the prior art made of record fails to teach trading strategy is written in a substantially English language format. The examiner disagrees with applicant's representative since Tertitski teaches trading strategy is written in a substantially English language format (front page of patent). Tertitski discloses a system and method for generation of strategies of investment in publicly traded stocks (i.e. trading strategy) in English format. In addition, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that

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the features upon which applicant relies (i.e., a trading strategy as used on a computer that is written in English language as opposed to machine-oriented computer codes) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, Applicant alleges that the prior art made of record fails to teach checking order queue for multiple instances of said entry or exit order. The examiner disagrees with applicant's representative since Tertitski teaches checking order queue for multiple instances of said entry or exit order (col. 3, line 65 to col. 4, line 8; fig. 2). Tertitski discloses the system checks if the historical prices have already been down loaded into the computer hard drive. If data is absent or not up today, the system asks user's permission to download the missing portion of the data. After data is loaded the system starts the calculation of strategy matrix.

With regards to the claims rejected as taught by Tertitski and Li, the examiner would like to point out that the reference teaches the claimed limitations and thus provides adequate support for the claimed limitations. Therefore, the examiner maintains that Tertitski and Li taught the claimed limitations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1-8, 14, 16, 18, 21-23, 25-41, 47, 49, 51, 54-56, and 58-72** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tertitski et al. (US 6,493,681) in view of Li et al. (US 7,043,449).

Re claims **1, 35, 68, and 71**, Tertitski teaches a method for automating trading strategies on a distributed financial computer network (col. 3, lines 10-25; col. 2, lines 11-14), said method comprising the steps of:

monitoring a data stream of market data from said distributed financial computer network pursuant to a trading strategy, said data stream corresponding to market conditions on said distributed financial computer network (col. 3, line 65 to col. 4, line 8; col. 2, lines 29-46 Tertitski discloses stock ticker symbol corresponding to a data stream of market data. In that Tertitski discloses the monitoring of a data when he discloses an ability to quickly analyze the dynamic and stability of the best strategy);

applying said trading strategy to said data stream of market data, said trading strategy including at least one market trigger condition (col. 1, line 58 to col. 2, line 46; figs. 1-2 and 5; Tertitski applying strategy by calculating formulas and displaying in matrix format); and

upon occurrence of said at least one market trigger condition, automatically generating an entry or exit order over said distributed financial computer network pursuant to said trading strategy (col. 2, lines 6-29; col. 5, lines 28-49; figs. 2 and 5; Tertitski discloses the automatic selection/recommendation of the best strategy).

However, Tertitski does not explicitly teach real-time. On the other hand, Li discloses real-time when he discloses real-time market setting in the analysis of securities price movements (col. 14, line 20 to col. 15, line 10; figs. 19, 3-4, and 6). Li discloses in a real-time setting, when live fetched data is received by the chart program from the data vendor via data interface, the chart program needs to recalculate some of the intra-market elements and update the chart display. Thus, it would have been obvious to one of ordinary skill in the art to enable a real-time market data for users to see current/live charting movements of financial market traded instruments as discloses in Li.

Re claims **2, 28, 36, 61, 67, and 70**, Tertitski teaches entry or exit order is an order selected from the group consisting of: securities orders, stock orders, option orders, index orders, commodity orders and futures orders (fig. 2). Tertitski discloses stock orders.

Re claims **3, 29, and 62**, Tertitski teaches distributed financial computer network is the Internet (col. 3, lines 11-19). Tertitski discloses the computer is connected to the Internet.

Re claims **4, 26, 37, and 59**, Tertitski teaches trading strategy is written in a substantially English language format (front page of patent). The main Inventor is Leonid Mark Tertitski with assignee as ProxyTrader, Incorporation based in Sunnyvale, California. Thus, this invention is in English language format.

Re claims **5-6 and 38-39**, Tertitski teaches automatically generating an entry/exit order upon the occurrence of said at least one market trigger condition (col. 2, lines 6-29; fig. 2). Tertitski discloses the calculation is performed based on a formula—G in figure 2 for sell limit or sell stop limit orders (i.e. an entry/exit order).

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Re claims **7** and **40**, Tertitski teaches monitoring said market data over said distributed financial computer network (col. 3, lines 11-19).

Re claims **8** and **41**, Tertitski teaches modifying trading strategy (col. 2, lines 29-46). Tertitski discloses the step of modifying trading strategy by having the system then recalculates and redisplay the strategy matrix on a new viewing date. The displayed strategy matrix changes with the speed of animation.

Re claims **14** and **47**, Tertitski teaches queuing said entry or exit order on an order queue (col. 5, line 42 to col. 6, line 5).

Re claims **16** and **49**, Tertitski teaches checking said order queue for multiple instances of said entry or exit order (col. 3, line 65 to col. 4, line 8). Tertitski discloses that the system checks if the historical prices have already been down loaded into the computer hard drive.

Re claims **18** and **51**, Tertitski teaches identifying at least one conflicting entry or exit order in said order queue; warning a user of said at least one conflicting entry or exit order; and requesting said user to exit said at least one conflicting entry or exit order (col. 5, lines 28-49; figs. 2 and 5).

Re claims **21** and **54**, Tertitski teaches entry or exit order is sent over said distributed financial computer network to be filled by a securities market (fig. 5).

Re claims **22**, **32**, **55**, and **65**, Tertitski teaches monitoring said entry or exit order over said distributed financial computer network while said entry or exit order is not yet filled; automatically generating warnings that said securities markets have not yet filled said entry or

exit order; and automatically generating warnings that said entry or exit order is only partially filled (figs. 2 and 5).

Re claims **23** and **56**, Tertitski teaches monitoring said trading strategy while said entry or exit order is not yet filled; automatically canceling said entry or exit orders based upon the status of said trading strategy; and automatically removing said entry or exit orders based upon the status of said trading strategy (col. 2, lines 6-29; col. 5, lines 28-49; figs. 2 and 5). Tertitski discloses the automatic selection/recommendation of the best strategy.

Re claims **25, 27, 30-31, 33-34, 58, 60, 63-64, 69, and 72**, Tertitski teaches storing a data stream of market data from said distributed financial computer network of a given prior period, said data stream corresponding to market conditions on said distributed financial computer network over said given prior period and testing a trading strategy using said data stream over said given prior period, whereby the historical success or failure of said trading strategy may be analyzed (col. 1, lines 20-55; col. 3, lines 20-64; col. 4, lines 9-36).

However, Tertitski does not explicitly teach real-time. On the other hand, Li discloses real-time when he discloses real-time market setting in the analysis of securities price movements (col. 14, line 20 to col. 15, line 10; figs. 19, 3-4, and 6). Li discloses in a real-time setting, when live fetched data is received by the chart program from the data vendor via data interface, the chart program needs to recalculate some of the intra-market elements and update the chart display. Thus, it would have been obvious to one of ordinary skill in the art to enable a real-time market data for users to see current/live charting movements of financial market traded instruments as discloses in Li.

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Re claim **66**, Li teaches displaying means for displaying the results of said testing on a chart (col. 2, lines 30-65; figs. 3-4). Li clearly discloses different types of charts.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

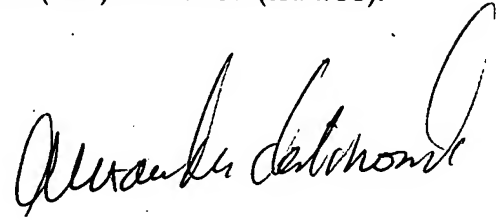
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached during her flexitime schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

TTH
4/25/07

A handwritten signature in black ink, appearing to read "Alexander Kalinowski", written in a cursive style.

ALEXANDER KALINOWSKI
SUPERVISORY PATENT EXAMINER